

notice at ¶¶38-39, that allows the filing of allotment papers electronically, as is permitted in other rulemaking areas.

D.

Proposed use of overall population data

40. We object to the concept, Commission notice at ¶¶40-46, that in certain circumstances, the population in the entire service area is to be given preference over the population in the community. This exasperates the tendency toward population-based allocation criteria that favor cities over rural interests.

E.

Limit of five on number of new or changed allotments in a proposal or counterproposal

41. We support this proposed rule, Commission notice at ¶¶35-37, as a governor on the number of allotments that can be surfaced in counterproposals to the surprise of members of the public and that clog the agency's processing system. We do object to the caveat that this rule may be broken if "the proponents of counterproposals can demonstrate special factors involving significant public interest benefits." The parties who "pre-plan" daisy chain counterproposals to avoid public notice can write up nice-sounding statements of this nature with impunity drawing the Commission into making highly subjective judgments. A hard and fast limit is better. If parties wish to assemble daisy chain proposals exceeding five new or changed allotments, they should be required to put their package in a

fresh petition that goes out on public notice.³ The hidden ambush of a huge daisy chain piggybacked on an obscure single petition is not in the public interest. It serves the private interests of the parties who would employ such a strategy; the public interest is served by openness and fairness.

F.

Greater attention to areas outside of urbanized areas

42. The focus of the "Tuck" policy is restricted to urbanized areas (as indicated earlier, the policy should be addressed and either abandoned or its faults remedied). We ask the Commission to give more attention to communities and allotment needs of people living outside of urbanized areas. For example, in ¶8 supra, we referred to a 1988 Commission policy statement relative to removal of an allotment from an underserved rural area and assigning the allotment to a well served urban area. We suggest that the Commission broaden this policy to provide that within the "all other category" of allotment principles, the Commission

³ The Commission's notice at ¶35, n. 62, cites two cases in which daisy chains were approved in which counterproposals resulted in service to large numbers of communities. Cross Plains, Texas, 15 FCC Rcd 5506 (MMB 2000) and Farmersville, Texas, 12 FCC Rcd 12056 (MMB 1997). The notice failed to also mention Ardmore, Alabama, 17 FCC Rcd 16332 (MMB 2002) in which an initiating petition was successfully filed by major joint parties who laid out their extensive overall plans for public notice and secured the desired final result while dealing with the counterproposals that were generated by such public notice.

favors the establishment of new allotments for rural areas.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Gene A. Bechtel', written over a horizontal line.

Gene A. Bechtel

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Counsel for Charles Crawford

October 3, 2005

EXHIBIT

Sovereignty Study of State Department
1931-1932, pp. 145-146

"not within the lawful jurisdiction of any other government" shall be occupied by American citizens. The discoverer of guano was to make such assertion, under oath. This assertion was made as to the Swan Islands, and a certificate, based in part thereon, was issued. If the jurisdiction, or claim of jurisdiction, of another State had been advanced the certificate would have been refused. The Cayo Verde Case, cited above, is illustrative. The mere issuance of a certificate, based upon the represented state of facts, cannot modify or alter the true facts. It would seem to follow that the Swan Islands, dominion over which was in Honduras, were not of that class of islands contemplated in the Act.

The same section provides that islands so possessed may be considered at the discretion of the President "as appertaining to the United States". The use of the word "appertain" is deff, since it carries no exact meaning and lends itself readily to circumstance and the wishes of those using it. It has given rise to such words as "appurtenant" and "appurtenance". The common law denies that land can be appurtenant to land. In a strict sense an island cannot be appurtenant to other territorial possessions. If the word "appertain" and its variants cannot be given a strict meaning they lose what little value they have when relied upon for the creation or

assertion

assertion of legal rights. The meaning of the Act must be found outside the phrase quoted above.

Section 1418 authorizes the President "at his discretion, to employ the land and naval forces of the United States to protect the rights of the discoverer..." If, upon occupation under the Guano Act, the islands were to become a part of the domain of the United States such authorization would be unnecessary. Further, the President probably would not have received discretionary power.

Section 1419 provides that nothing in the Act "shall be construed as obliging the United States to retain possession of the islands" after the removal of guano. If the word "possession" was used in a strict sense it follows that a mere temporary occupation, for a fixed purpose, was contemplated. Of course, possession could be retained. But it is doubtful if the Act contemplated such occupation as would give rise to the right of sovereignty.

Section 1412 stipulates that a discoverer shall show, inter alia, that "possession was taken in the name of the United States...". This condition was included in the Attorney General's opinion of June 2, 1857. As shown above, several certificates recited that occupation was taken in the name of the United States; the Swan Islands certificate did not. But it is my opinion that

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SEP 30 2005

Federal Communications Commission
Office of Secretary

STUDY OF REPORTED DECISIONS
BY THE FCC
APPLYING THE "TUCK" PRECEDENT
TO DETERMINE WHETHER TO GRANT OR DENY
A "FIRST LOCAL SERVICE STATUS"
IN FM ALLOTMENT RULEMAKING PROCEEDINGS

AUGUST 2004

VOLUME I

Reported decisions applying the "Tuck" precedent
in which a "first local service status" was denied

Exhibit A

Reported decisions applying the "Tuck" precedent
in which a "first local service status" was granted

Exhibits 1-25

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 Urbanized Area: Missoula, Montana

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- Ex. 21 April 28, 2000
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- Ex. 26 March 23, 2001
Community: Park Forest, Illinois, pop. 24,656
Urbanized Area: Chicago, Illinois
- Ex. 27 May 18, 2001
Community: White Oak, Texas, pop. 5,136
Urbanized Area: Longview, Texas
- Ex. 28 July 6, 2001
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- Ex. 31 March 19, 2002
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- Ex. 32 June 14, 2002
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- Ex. 34 September 20, 2002
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- Ex. 35 October 18, 2002
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Urbanized Area: Jacksonville, Florida
- Ex. 36 December 16, 2002
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- Ex. 37 May 30, 2003
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- Ex. 38 June 23, 2003
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- Ex. 39 July 24, 2003
Community: Malta, New York, pop. not given
Urbanized Areas: Albany and Saratoga Springs, NY
- Ex. 40 September 5, 2003
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- Ex. 41 September 5, 2003
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- Ex. 42 November 14, 2003
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- Ex. 43 December 8, 2003
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- Ex. 44 December 23, 2003
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- Ex. 45 January 16, 2004
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- Ex. 46 January 23, 2004
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- Ex. 47 January 30, 2004
Community: Irmo, South Carolina, pop. 11,039
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- Ex. 48 February 9, 2004
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- Ex. 49 April 14, 2004
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Urbanized Area: Birmingham, Alabama
- Ex. 51 June 25, 2004
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Urbanized Area: Cheyenne, Wyoming
- Ex. 52 July 9, 2004
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and
Community: Covington, Washington, pop. 13,081
Urbanized Area: Seattle, Washington
- Ex. 53 August 9, 2004
Community: Sellersburg, Indiana, pop. 6,071
Urbanized Area: Louisville, Kentucky

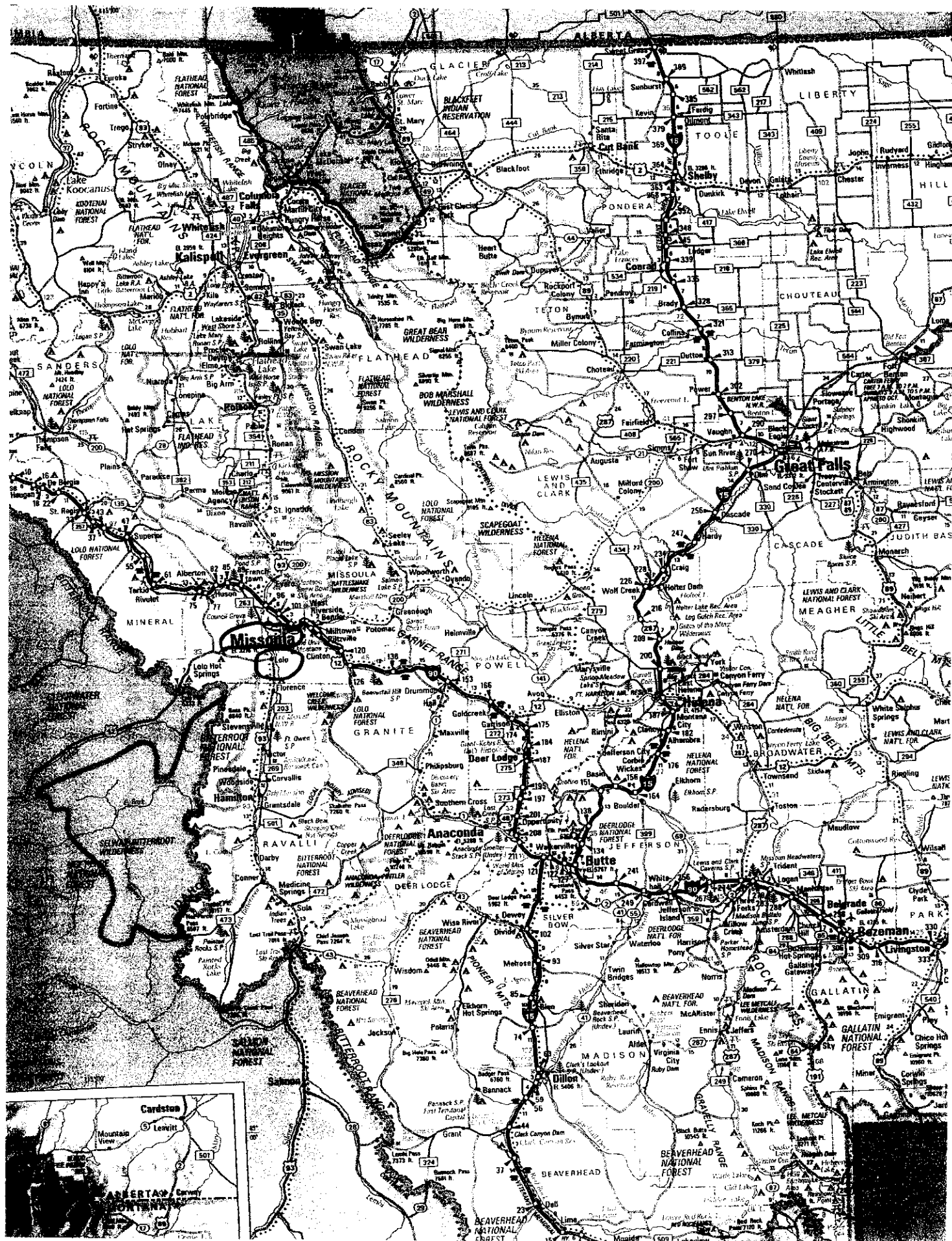
Exhibit A

Wallace et al
DA 99-2653
MM 97-203
November 30, 1999

Lolo, Montana
Pop. 2,746
Denied first local service status

In relation to Missoula, Montana Urbanized Area

Map attached



Missoula (57,053)

Lolo (3,388)

Exhibit 1

Falmouth, et al
DA 95-1964
MM 94-85
September 22, 1995

Maspee, Massachusetts
Pop. 7884
Granted first local service status

In relation to Hyannis, Mass. Urbanized Area

Proponent: Station in Falmouth, Mass., outside any Urbanized
Area, proposing to move to the subject community

Map attached

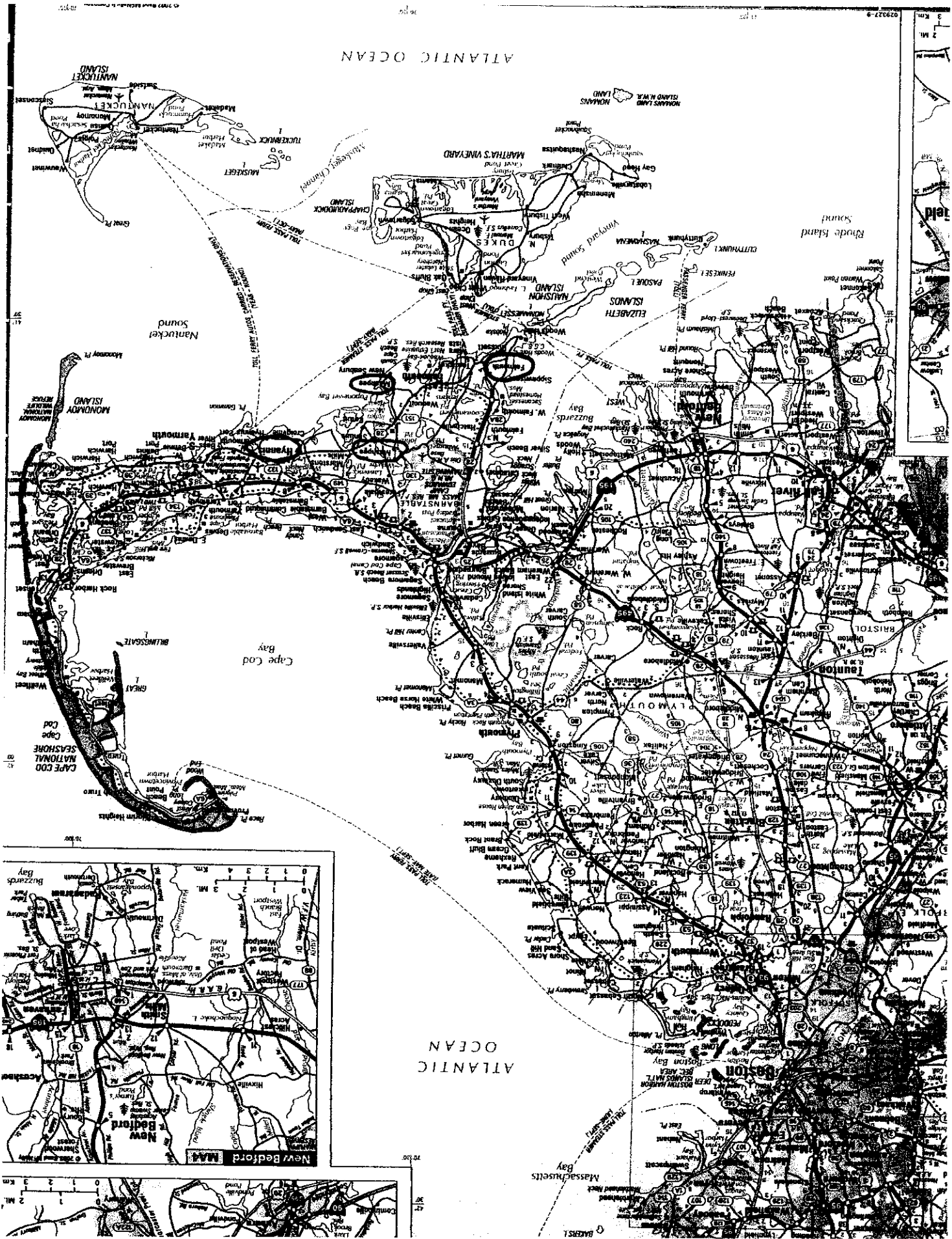


Exhibit 2

Cadiz et al
DA 95-1993
MM 93-314
September 29, 1995

Oak Grove, Kentucky
Pop. 2,863
Granted first local service status

In relation to Clarkville, Tenn./Ky., Urbanized Area

Proponent: Station in Cadiz, Kentucky, located outside of any
Urbanized Area, proposing to move to the subject community

Map attached

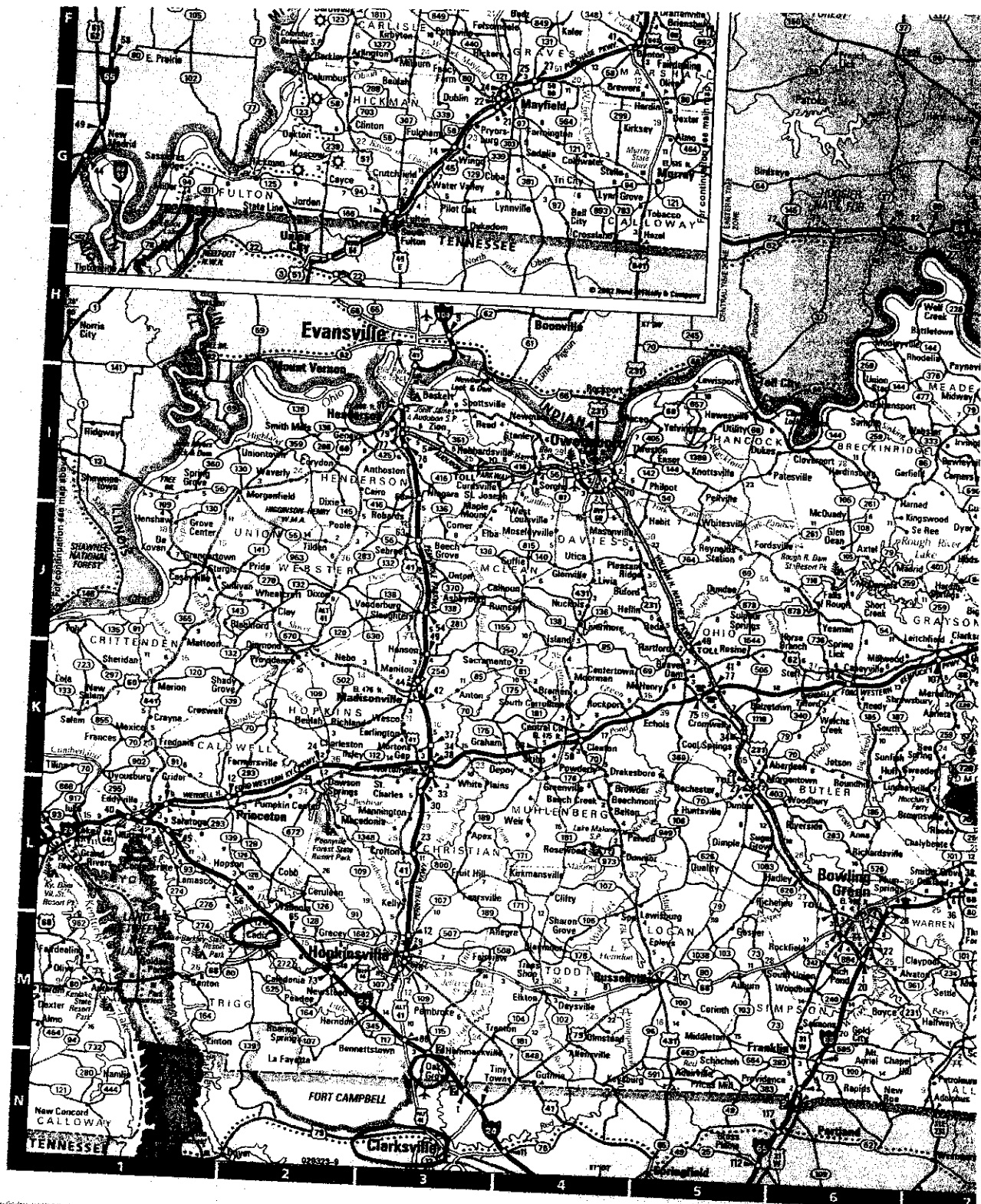


Exhibit 3

Coolidge et al
DA 96-377
MM 95-109
March 29, 1996

Gilbert, Arizona
Pop. 29,188
Granted first local service status

In relation to Phoenix Urbanized Area

Proponent: Station in Coolidge, Arizona, outside any Urbanized Area, proposing to move to the subject communtiy

Map attached

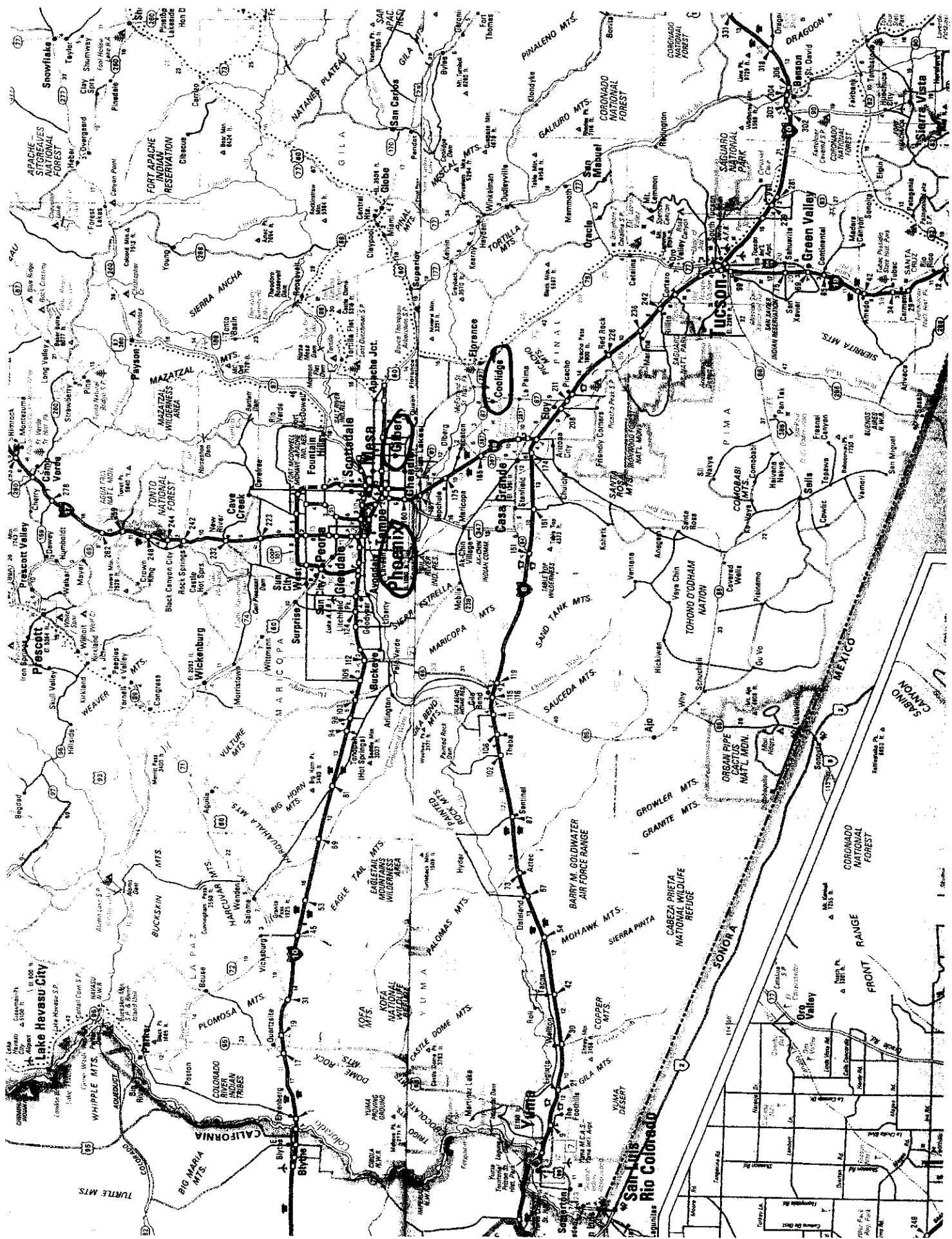


Exhibit 4

Ada et al
DA 1951
MM 95-175
November 29, 1996

New Castle, Oklahoma
Pop. 4,214
Granted first local service status

In relation to Oklahoma City Urbanized Area

Proponent: Station in Ada, Oklahoma, located outside any
Urbanized Area, proposing to move to the subject community

Map attached

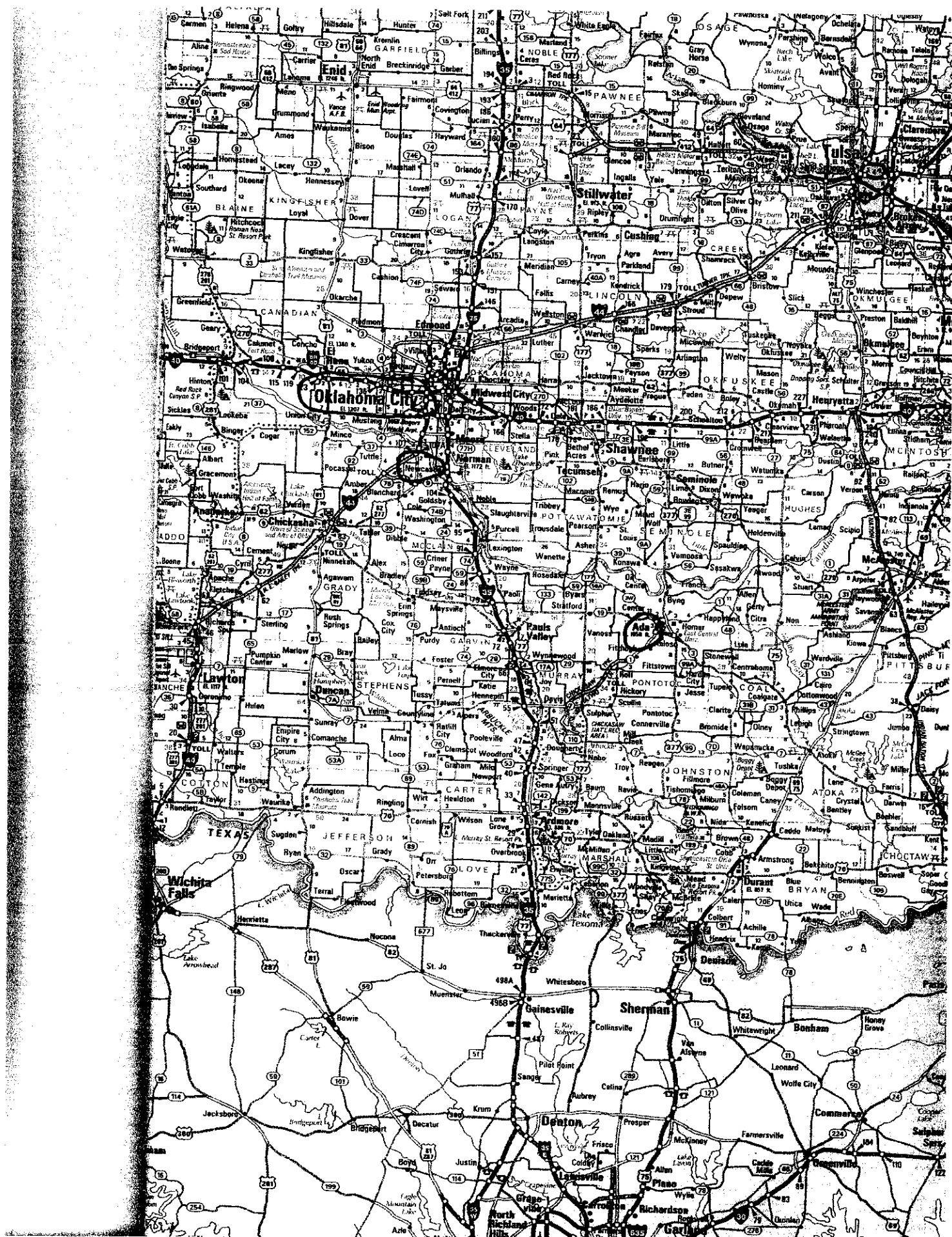


Exhibit 5

Farmersville et al
DA 96-2210
MM 96-10
January 17, 1997

Flower Mound, Texas
Pop. 15,527
Granted first local service status

In relation to Denton and Lewisville, Texas Urbanized Areas

Proponent: Station located in Sherman, Texas, proposing to move
to the subject community

Maps attached

